

1 **H. B. 4209**

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3 (By Delegate Fleischauer)

4 [Introduced January 17, 2014; referred to the  
5 Committee on the Judiciary then Finance.]

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10 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia,  
11 1931, as amended; and to amend said code by adding thereto a  
12 new section, designated §21A-6-18, all relating to domestic  
13 violence victims' eligibility for unemployment compensation  
14 benefits; removing disqualification for certain victims of  
15 domestic violence, sexual offenses, stalking or harassment;  
16 and requiring training of Workforce West Virginia employees in  
17 the nature and dynamics of domestic violence to aid employees  
18 who interact with claimants.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §21A-6-3 of the Code of West Virginia, 1931, as amended,  
21 be amended and reenacted; and that said code be amended by adding  
22 thereto a new section, designated §21A-6-18, all to read as  
23 follows:

24 **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

1 **§21A-6-3. Disqualification for benefits.**

2       Upon the determination of the facts by the commissioner, an  
3 individual is disqualified for benefits:

4       (1) For the week in which he or she left his or her most  
5 recent work voluntarily without good cause involving fault on the  
6 part of the employer and until the individual returns to covered  
7 employment and has been employed in covered employment at least  
8 thirty working days.

9       For the purpose of this subdivision, an individual has not  
10 left his or her most recent work voluntarily without good cause  
11 involving fault on the part of the employer, if the individual  
12 leaves his or her most recent work with an employer and if he or  
13 she in fact, within a fourteen-day calendar period, does return to  
14 employment with the last preceding employer with whom he or she was  
15 previously employed within the past year prior to his or her return  
16 to workday, and which last preceding employer, after having  
17 previously employed the individual for thirty working days or more,  
18 laid off the individual because of lack of work, which layoff  
19 occasioned the payment of benefits under this chapter or could have  
20 occasioned the payment of benefits under this chapter had the  
21 individual applied for benefits. It is the intent of this  
22 paragraph to cause no disqualification for benefits for an  
23 individual who complies with the foregoing set of requirements and  
24 conditions. Further, for the purpose of this subdivision, an

1 individual has not left his or her most recent work voluntarily  
2 without good cause involving fault on the part of the employer, if  
3 the individual was compelled to leave his or her work: ~~for his or~~  
4 ~~her own~~

5 (A) For health-related reasons and notifies the employer prior  
6 to leaving the job or within two business days after leaving the  
7 job or as soon as practicable and presents written certification  
8 from a licensed physician within thirty days of leaving the job  
9 that his or her work aggravated, worsened or will worsen the  
10 individual's health problem; or

11 (B) (i) Due to circumstances directly resulting from:

12 (I) Domestic violence, as defined in section two hundred two,  
13 article twenty-seven, chapter forty-eight;

14 (II) A sexual offense in article eight-b, chapter sixty-one of  
15 this code; or

16 (III) Stalking or harassment as defined by section nine,  
17 article two-a, chapter sixty-one by a family or household member as  
18 defined in section two hundred four, article twenty-seven, chapter  
19 forty-eight; and

20 (ii) The individual:

21 (I) Reasonably fears future domestic violence, a future sexual  
22 offense or stalking or harassment at or on route to or from the  
23 individual's place of employment;

24 (II) Wishes to relocate to another geographic area in order to

1 avoid future domestic violence, sexual offense or stalking or  
2 harassment against the individual, the individual's family, or  
3 coworkers;

4 (III) Reasonably believes that leaving work is necessary for  
5 the future safety of the individual, the individual's family, or  
6 coworkers;

7 (IV) Is required to leave employment as a condition of  
8 receiving services or shelter from an agency which provides support  
9 services or shelter to victims of domestic violence and sexual  
10 assault; or

11 (V) Reasonably believes for any reason related to domestic  
12 violence or a sexual offense that termination of employment is  
13 necessary for the future safety of the individual, the individual's  
14 family, or coworkers.

15 (iii) The benefits payable under this paragraph (B) shall be  
16 paid from the fund provided under the provisions of article eight  
17 of this chapter and are not chargeable to the employer.

18 (2) For the week in which he or she was discharged from his or  
19 her most recent work for misconduct and the six weeks immediately  
20 following that week; or for the week in which he or she was  
21 discharged from his or her last thirty-day employing unit for  
22 misconduct and the six weeks immediately following that week. The  
23 disqualification carries a reduction in the maximum benefit amount  
24 equal to six times the individual's weekly benefit. However, if

1 the claimant returns to work in covered employment for thirty days  
2 during his or her benefit year, whether or not the days are  
3 consecutive, the maximum benefit amount is increased by the amount  
4 of the decrease imposed under the disqualification; except that:

5       If he or she were discharged from his or her most recent work  
6 for one of the following reasons, or if he or she were discharged  
7 from his or her last thirty days employing unit for one of the  
8 following reasons:     Gross misconduct consisting of willful  
9 destruction of his or her employer's property; assault upon the  
10 person of his or her employer or any employee of his or her  
11 employer; if the assault is committed at the individual's place of  
12 employment or in the course of employment; reporting to work in an  
13 intoxicated condition, or being intoxicated while at work;  
14 reporting to work under the influence of any controlled substance,  
15 as defined in chapter sixty-a of this code without a valid  
16 prescription, or being under the influence of any controlled  
17 substance, as defined in ~~said~~ chapter sixty-a without a valid  
18 prescription, while at work; adulterating or otherwise manipulating  
19 a sample or specimen in order to thwart a drug or alcohol test  
20 lawfully required of an employee; refusal to submit to random  
21 testing for alcohol or illegal controlled substances for employees  
22 in safety sensitive positions as defined in section two, article  
23 one-d, chapter twenty-one of this code; arson, theft, larceny,  
24 fraud or embezzlement in connection with his or her work; or any

1 other gross misconduct, he or she is disqualified for benefits  
2 until he or she has thereafter worked for at least thirty days in  
3 covered employment: *Provided*, That for the purpose of this  
4 subdivision, the words "any other gross misconduct" includes, but  
5 is not limited to, any act or acts of misconduct where the  
6 individual has received prior written warning that termination of  
7 employment may result from the act or acts.

8 An individual may not be disqualified under this subdivision  
9 if the misconduct or gross misconduct was due to circumstances  
10 directly resulting from domestic violence, as defined in section  
11 two hundred two, article twenty-seven, chapter forty-eight; a  
12 sexual offense in article eight-b, chapter sixty-one of this code;  
13 or stalking or harassment as defined by section nine, article two-  
14 a, chapter sixty-one by a family or household member as defined in  
15 section two hundred four, article twenty-seven, chapter forty-  
16 eight, and the individual: (i) Reasonably fears future domestic  
17 violence, a future sexual offense, or stalking or harassment at or  
18 on route to or from the individual's place of employment; (ii)  
19 wishes to relocate to another geographic area in order to avoid  
20 future domestic violence, sexual offense, or stalking or harassment  
21 against the individual, the individual's family, or coworkers;  
22 (iii) reasonably believes that leaving work is necessary for the  
23 future safety of the individual, the individual's family, or  
24 coworkers; (iv) is required to leave employment as a condition of

1 receiving services or shelter from an agency which provides support  
2 services or shelter to victims of domestic violence and sexual  
3 assault, or (v) reasonably believes for any reason related to  
4 domestic violence or a sexual offense that termination of  
5 employment is necessary for the future safety of the individual,  
6 the individual's family, or coworkers. The benefits payable under  
7 this provision shall be paid from the fund provided under the  
8 provisions of article eight of this chapter and are not chargeable  
9 to the employer.

10       (3) For the week in which he or she failed without good cause  
11 to apply for available, suitable work, accept suitable work when  
12 offered, or return to his or her customary self-employment when  
13 directed to do so by the commissioner, and for the four weeks which  
14 immediately follow for such additional period as any offer of  
15 suitable work shall continue open for his or her acceptance. The  
16 disqualification carries a reduction in the maximum benefit amount  
17 equal to four times the individual's weekly benefit amount.

18       (4) For a week in which his or her total or partial  
19 unemployment is due to a stoppage of work which exists because of  
20 a labor dispute at the factory, establishment or other premises at  
21 which he or she was last employed, unless the commissioner is  
22 satisfied that he or she: ~~(1)~~ (A) Was not participating, financing  
23 or directly interested in the dispute; and ~~(2)~~ (B) did not belong  
24 to a grade or class of workers who were participating, financing or

1 directly interested in the labor dispute which resulted in the  
2 stoppage of work. No disqualification under this subdivision is  
3 imposed if the employees are required to accept wages, hours or  
4 conditions of employment substantially less favorable than those  
5 prevailing for similar work in the locality, or if employees are  
6 denied the right of collective bargaining under generally  
7 prevailing conditions, or if an employer shuts down his or her  
8 plant or operation or dismisses his or her employees in order to  
9 force wage reduction, changes in hours or working conditions. For  
10 the purpose of this subdivision if any stoppage of work continues  
11 longer than four weeks after the termination of the labor dispute  
12 which caused stoppage of work, there is a rebuttable presumption  
13 that part of the stoppage of work which exists after a period of  
14 four weeks after the termination of the labor dispute did not exist  
15 because of the labor dispute; and in that event the burden is upon  
16 the employer or other interested party to show otherwise.

17 (5) For a week with respect to which he or she is receiving or  
18 has received:

19 ~~(a)~~ (A) Wages in lieu of notice;

20 ~~(b)~~ (B) Compensation for temporary total disability under the  
21 workers' compensation law of any state or under a similar law of  
22 the United States; or

23 ~~(c)~~ (C) Unemployment compensation benefits under the laws of  
24 the United States or any other state.

1           (6) For the week in which an individual has voluntarily quit  
2 employment to marry or to perform any marital, parental or family  
3 duty, or to attend to his or her personal business or affairs and  
4 until the individual returns to covered employment and has been  
5 employed in covered employment at least thirty working days:  
6 *Provided*, That an individual who has voluntarily quit employment to  
7 accompany a spouse serving in active military service who has been  
8 reassigned from one military assignment to another is not  
9 disqualified for benefits pursuant to this subdivision: *Provided*  
10 *however*, That the account of the employer of an individual who  
11 leaves the employment to accompany a spouse reassigned from one  
12 military assignment to another may not be charged.

13           (7) Benefits may not be paid to any individual on the basis of  
14 any services, substantially all of which consist of participating  
15 in sports or athletic events or training or preparing to ~~so~~  
16 participate, for any week which commences during the period between  
17 two successive sport seasons (or similar periods) if the individual  
18 performed the services in the first of the seasons (or similar  
19 periods) and there is a reasonable assurance that the individual  
20 will perform the services in the later of the seasons (or similar  
21 periods).

22           (8) ~~(a)~~ (A) Benefits may not be paid on the basis of services  
23 performed by an alien unless the alien is an individual who was  
24 lawfully admitted for permanent residence at the time the services

1 were performed, was lawfully present for purposes of performing the  
2 services or was permanently residing in the United States under  
3 color of law at the time the services were performed (including an  
4 alien who is lawfully present in the United States as a result of  
5 the application of the provisions of Section 203(a)(7) or Section  
6 212(d)(5) of the Immigration and Nationality Act): *Provided*, That  
7 any modifications to the provisions of Section 3304(a)(14) of the  
8 federal Unemployment Tax Act as provided by Public Law 94-566 which  
9 specify other conditions or other effective date than stated in  
10 this subdivision for the denial of benefits based on services  
11 performed by aliens and which modifications are required to be  
12 implemented under state law as a condition for full tax credit  
13 against the tax imposed by the federal Unemployment Tax Act are  
14 applicable under the provisions of this section.

15 ~~(b)~~ (B) Any data or information required of individuals  
16 applying for benefits to determine whether benefits are not payable  
17 to them because of their alien status shall be uniformly required  
18 from all applicants for benefits.

19 ~~(c)~~ (C) In the case of an individual whose application for  
20 benefits would otherwise be approved, no determination that  
21 benefits to the individual are not payable because of his or her  
22 alien status may be made except upon a preponderance of the  
23 evidence.

24 (9) For each week in which an individual is unemployed

1 because, having voluntarily left employment to attend a school,  
2 college, university or other educational institution, he or she is  
3 attending that school, college, university or other educational  
4 institution, or is awaiting entrance thereto or is awaiting the  
5 starting of a new term or session thereof, and until the individual  
6 returns to covered employment.

7       (10) For each week in which he or she is unemployed because of  
8 his or her request, or that of his or her duly authorized agent,  
9 for a vacation period at a specified time that would leave the  
10 employer no other alternative but to suspend operations.

11       (11) In the case of an individual who accepts an early  
12 retirement incentive package, unless he or she: ~~(i)~~ (A)  
13 Establishes a well-grounded fear of imminent layoff supported by  
14 definitive objective facts involving fault on the part of the  
15 employer; and ~~(ii)~~ (B) establishes that he or she would suffer a  
16 substantial loss by not accepting the early retirement incentive  
17 package.

18       (12) For each week with respect to which he or she is  
19 receiving or has received benefits under Title II of the Social  
20 Security Act or similar payments under any Act of Congress, or  
21 remuneration in the form of an annuity, pension or other retirement  
22 pay from a base period employer or chargeable employer or from any  
23 trust or fund contributed to by a base period employer or  
24 chargeable employer or any combination of the above, the weekly

1 benefit amount payable to the individual for that week shall be  
2 reduced (but not below zero) by the prorated weekly amount of those  
3 benefits, payments or remuneration: *Provided*, That if the amount  
4 of benefits is not a multiple of \$1, it shall be computed to the  
5 next lowest multiple of \$1: *Provided, however*, That there is no  
6 disqualification if in the individual's base period there are no  
7 wages which were paid by the base period employer or chargeable  
8 employer paying the remuneration, or by a fund into which the  
9 employer has paid during the base period: *Provided further*, That  
10 notwithstanding any other provision of this subdivision to the  
11 contrary, the weekly benefit amount payable to the individual for  
12 that week may not be reduced by any retirement benefits he or she  
13 is receiving or has received under Title II of the Social Security  
14 Act or similar payments under any Act of Congress. A claimant may  
15 be required to certify as to whether or not he or she is receiving  
16 or has been receiving remuneration in the form of an annuity,  
17 pension or other retirement pay from a base period employer or  
18 chargeable employer or from a trust fund contributed to by a base  
19 period employer or chargeable employer.

20 (13) For each week in which and for fifty-two weeks  
21 thereafter, beginning with the date of the decision, if the  
22 commissioner finds the individual who within twenty-four calendar  
23 months immediately preceding the decision, has made a false  
24 statement or representation knowing it to be false or knowingly

1 fails to disclose a material fact, to obtain or increase any  
2 benefit or payment under this article: *Provided*, That  
3 disqualification under this subdivision does not preclude  
4 prosecution under section seven, article ten of this chapter.

5 **§21A-6-18. Administration of domestic violence claims.**

6 The Executive Director of Workforce West Virginia shall:

7 (1) Promulgate procedural rules providing for the  
8 confidentiality of information, including without limitation  
9 addresses and contact information, obtained in evaluating claims  
10 for domestic violence, sexual offenses and stalking by family or  
11 household members; and

12 (2) Establish and implement a training curriculum addressing  
13 the nature and dynamics of domestic violence to aid employees who  
14 interact with claimants:

15 (A) In determining whether a claimant's separation stems from  
16 domestic violence, a sexual offense or stalking by family or  
17 household members; and

18 (B) In reliably screening, identifying and adjudicating those  
19 claims.

NOTE: The purpose of this bill is to prevent an individual from being disqualified from receiving unemployment compensation benefits when their separation from employment is due to domestic violence, sexual offenses or stalking by family or household members. The individual must seek and accept new suitable work in order to remain eligible for benefits. The bill provides that the

employer is not chargeable for benefits paid when the separation from work is for those reasons.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§21A-6-8 is new; therefore, it has been completely underscored.